

BEFORE THE IDAHO BOARD OF TAX APPEALS

IN THE MATTER OF THE APPEALS OF JAN)	APPEAL NOS. 06-A-2147,
BARANY from the decision of the Board of)	06-A-2148 AND 06-A-2149
Equalization of Idaho County for tax year 2006.)	FINAL DECISION
)	AND ORDER

AGRICULTURAL EXEMPTION APPEAL

THESE MATTERS came on for consolidated hearing October 23, 2006, in Grangeville, Idaho, before Board Member Vernon L. Driver. Board Members Lyle R. Cobbs and David E. Kinghorn participated in this decision. Appellant Jan Barany appeared for herself. Assessor Jim Beckman, County Appraiser Max Pelham and Tax Commission Consulting Appraiser Cliff McLean appeared for Respondent Idaho County. These appeals are taken from a decision of the Idaho County Board of Equalization (BOE) denying an exemption claim for taxing purposes of property described as Parcel Nos. RP0350200003B0A, RP0350200004A0A and RP0350200004B0A.

The issue on appeal is whether the subject land qualifies for an exemption pursuant to Idaho Code §§ 63-604(1)(b) and 63-602K, the agricultural exemption.

The decision of the Idaho County Board of Equalization is affirmed.

FINDINGS OF FACT

The total assessed land value for the three subject parcels is \$189,680. Appellant requests the land value be reduced to \$700 reflecting an exemption grant for "land actively devoted to agriculture." The exemption is specifically sought under Idaho Code § 63-604(1)(b)(i) or (ii), the two sections listing the criteria for contiguous land of five acres or less.

The subject property is three similarly sized, contiguous subdivision lots totaling 4.984 acres along Slate Creek. One lot has a small tool shed. The subdivision does not restrict agricultural use. Appellant's residence and another commonly owned 120 acres are located

directly across the county road from subject property. Appellant together with her husband are the “record owners” of the subject property (Idaho Code § 63-201(19)).

A fenced portion of the subject property contains six (6) fruit trees and a garden plot. Some produce is typically sold to neighbors and some is consumed by the property owners. In 2005, Appellant was ill during harvest and let neighbors pick fruit for free so it wouldn't go to waste. This reduced the amount of gross income for the year.

The subject property is reportedly perimeter fenced and grazed. The County Assessor found no evidence of livestock grazing during an appraisal visit. However, Appellant testified that rotational grazing did occur in the spring and summer. Most recently Appellant has owned and apparently grazed four (4) animals, a horse and three mules. An IRS Schedule F was offered into evidence for 2005 and 2004. One was filed in 2003 but a copy was not available. The grazing of subject land and the fruit and vegetable production has existed for the last three growing seasons prior to 2006.

Taxpayer's agriculturally produced gross revenue for 2005 was \$971. The principal product was listed as vegetables and livestock. This 2005 revenue may have included a grazing benefit derived from the 120 acres of commonly owned property located across the road. The subject property owners report 2005 gross household income in the amount of \$29,031.

The following information was provided in exhibit materials. The owners personal consumption was estimated by Appellant using “regular” and “organic” produce prices. A minimum of \$3,500 was estimated “to purchase what we grow.” Alternately, \$5,000 was offered as a conservative estimate to purchase organically grown produce. The County cautioned against using retail prices of certified organic produce that may represent distant marketplaces. It was not explained by Appellant how household gross income was determined or supported.

Year	Gross Income	Sale Rev.	Personal Consump.	Total	Percentage
2003	\$24,000	1,750	3,500/5,000	5,250/6,750	22%/28%
2004	\$24,012	1,187	3,500/5,000	4,687/6,187	19.5%/25.8%
2005	\$29,031	971	3,500/5,000	4,471/5,971	15.5%/20.6%

The County reported the basis and origin of the 2006 assessed values on subject property. Reappraisal was completed for the 2006 tax year and during associated inspections the Assessor did not note any grazing on subject lands and observed what was considered a typical garden for the Salmon River Country. The subdivision lots were considered small and most suitably geared toward residential use. No application for an agricultural exemption was filed on subject lands in 2006. An administrative rule purportedly requires such an application be filed by March 15. The County reports no personal property declaration has been filed in connection with subject land.

Upon a subsequent inquiry (exemption application) by the property owner, the Assessor directed the matter to the County BOE for consideration. The BOE denied exempt status noting the Assessor's report that the "application for agricultural valuation was not received within the time frame established by code." The record does not contain a copy of the suggested application for exemption.

Upon questioning it was clarified that subject land is not certified or designated in anyway as an organic operation. However it is reported that no chemicals or pesticides are used. Further testimony provided the grazing use historically was part of a breeding program. Due to problems from Star Thistle, breeding was temporarily suspended.

CONCLUSIONS OF LAW

This Board's goal in its hearings is the acquisition of sufficient, accurate evidence to support a determination of fair market value or exempt status. This Board, giving full opportunity

for all arguments and having considered all testimony and documentary evidence submitted by the parties in support of their respective positions, hereby enters the following.

In this instance, the appeal to the County Board of Equalization (BOE) sought an agricultural exemption on subject land. The notice of appeal to the State Board of Tax Appeals also stated the exemption claim. No dispute on market value was pursued before the BOE. The claim for exemption is made under § 63-604(1)(b), Idaho Code. See also § 63-602K. At no time has the claim sought or centered on qualification under another subsection of § 63-604. Pertinent parts of the code follow.

§ 63-604. Land actively devoted to agriculture defined

(1) For property tax purposes, land which is actively devoted to agriculture shall be eligible for appraisal, assessment and taxation as agricultural property each year it meets one (1) or more of the following qualifications:

(a) . . . and is actively devoted to agriculture which means:

(i) *It is used to produce field crops including, but not limited to, grains, feed crops, fruits and vegetables; or*

. . .

(iii) *It is used by the owner for the grazing of livestock to be sold as part of a for-profit enterprise . . .*

. . .

(b) *The area of such land is five (5) contiguous acres or less and such land has been actively devoted to agriculture within the meaning of subsection (1)(a) of this section during the last three (3) growing seasons; and*

(i) *It agriculturally produces for sale or home consumption the equivalent of fifteen percent (15%) or more of the owner's or lessee's annual gross income; or*

(ii) *It agriculturally produced gross revenues in the immediately preceding year of one thousand dollars (\$1,000) or more. When the area of land is five (5) contiguous acres or less, such land shall be presumed to be nonagricultural land until it is established that the requirements of this subsection have been met.*

. . .

(3) Land utilized for the grazing of a horse or other animals kept primarily for personal use or pleasure rather than as part of a bona fide for-profit enterprise shall not be considered to be land actively devoted to agriculture.

. . .

(7) As used in this section:

(a) "Contiguous" means being in actual contact or touching along a boundary or at a point, except no area of land shall be considered not contiguous solely by reason of a roadway or other right-of-way.

(b) "For-profit" means the enterprise will, over some period of time, make or attempt to make a return of income exceeding expenses (*Emphasis added.*)

The State Legislature intended certain small operations to qualify for the agricultural exemption. The criteria for land of five acres or less is mostly a financial test. Exemptions from tax are strictly construed. The statute does not contain a March 15 application deadline and this Board properly considers the evidence for exemption on appeal.

This is a particularly close case for the 2006 tax year. Due to somewhat unusual or untimely circumstances, gross revenue from produce sales was down in 2005. The total gross revenue for that year was less than \$1,000, and apart from other considerations, could not qualify under subsection (ii) above. In looking at qualification under subsection (i) above, three years of financial information must be considered. Appellant provided data for the three years on owner gross income and on annual production for sale and home consumption.

Ultimately we hold the taxpayer has not demonstrated clear entitlement to an agricultural exemption on subject land. Of particular concern was "owner gross income" figures which were not well documented or explained. Additionally and equally important, the production sale figures were not clearly shown to pertain strictly to the subject property. In considering a claim for exemption on contiguous land less than five acres in size, "it", i.e. the land in question, must alone agriculturally produce 15% or more of an owner's gross income. With such a close case, even a modest amount of production revenue in any year that was generated in part from other land would tip the scale. Given the real possibility and suggestion that animals are grazed elsewhere during the year and that such animals are occasionally sold and the revenue all

reported on the same Schedule F, Appellants have not demonstrated clear entitlement. The gross income percentage (15% or more) must be met by the land seeking exemption. It was likewise not clear whether the vegetable and fruit production occurred on all three parcels and precisely how much land was involved in each instance. The decision by the Idaho County Board of Equalization to deny exemption will be affirmed for the above stated reasons.

FINAL ORDER

In accordance with the foregoing Final Decision, IT IS ORDERED that the decision of the Idaho County Board of Equalization concerning the subject parcel be, and the same hereby is, AFFIRMED.

DATED this 5th day of March, 2007.